at the time of the accident was right across the road, and the allegation that the driver was driving the car without regard to traffic laws, all appear to have been made with the direct object of forcing on a prosecution of Muniandy, and of ensuring, so far as possible, that he should be held criminally responsible for the accident. Such remarks were in no way necessary for a discussion of the question of special traffic control at schools, and I do not accept that they were made for that purpose. The persons responsible for publication of those remarks must, in my view, be held responsible in law as intending the natural consequences of their acts. Even if the words used were not consciously intended to affect the course of proceedings then imminent, it is clear that they were calculated to do so, and the respondents must have been well aware of this.

It seems clear that the publication of such remarks must have been extremely embarrassing to the authorities whose duty it was to decide whether criminal proceedings should be launched against Muniandy, though that alone would not give rise to contempt; but it would also be exceedingly embarrassing to the Magistrate who was later to try the case. It has been suggested that, where the case will be tried by a Judge or Magistrate alone, he cannot be affected by outside influence, and therefore the publication will not tend to affect the due administration of justice. This point also is dealt with in *R. v. Davies, ex parte Delbert-Evans*[10], where Humphreys, J., at p. 442 said :—

"I think it is a fallacy to say or to assume that the presiding judge is a person who cannot be affected by outside information. He is a human being, and while I do not suggest that it is likely that any judge, as the result of information which had been improperly conveyed to him, would give a decision which otherwise he would not have given, it is embarrassing to a judge that he should be informed of matters which he would much rather not hear and which make it much more difficult for him to do his duty. To repeat the words I have already read from the judgment of Wills J. in **Rex v. Parke**. 'The reason why the publication of articles like those with which we have to deal is treated as a contempt of court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists — namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it.'".

I kept in mind the rule laid down in *Reg. v. Payne*[11], that this jurisdiction ought only to be invoked in clear cases and on serious grounds, and I made full allowance for the fact that an apology had been offered, and submission made, but I thought this contempt was a serious one, and although the learned Deputy Public Prosecutor would have been satisfied if the rule *nisi* had been discharged on payment of costs, I felt that this would not meet the case. Were it not for the possibility that the respondents may have believed, though wrongly, that publication at that time could not amount to contempt, the fines would have been heavy and I should have considered seriously whether the editor ought not to be imprisoned.

Re WEE SWEE HOON, DECD.; LIM AH MOY & ANOR. v. ONG ENG SAY.

[O. C. J. (Brown, J.) May 14, 1953]

[Singapore — Suit No. 1535 of 1952]

Evidence — Cross-examination — Court's discretion to allow a party to cross-examine his own witness — Distinction between the law in this country and the law in England.

When a witness has given an answer or answers, which the party calling him knows to be in conflict with some statement or evidence which he has previously made or given, the proper procedure is for counsel then to ask him whether he made a statement (or gave evidence) at a certain place on a certain date. Having heard his answer (whatever it may be) no further questions should be put at that stage. But counsel should then hand to the Judge the statement (or record of the evidence), and apply for leave to cross-examine him under the provisions of section 155 of the Evidence Ordinance. The Judge, having given the other side an opportunity of seeing the document and making his submissions on the application, will then give his ruling.

ACTION.

The facts were that the deceased's Morris car was involved in a collision with the defendant's lorry. The plaintiff's case was that the deceased was travelling on his proper side of the road and that the defendant's lorry was on his wrong side of the road and that in order to escape and try to avoid a head-on collision the deceased went across to his right-hand side. The defendant's case was that he was driving his lorry on the crown of the road, and that the deceased was overtaking another car; that he (the defendant) moved over to his left, and that the deceased came over to his wrong side of the road and collided.

The defendant called the syce who was driving the car which defendant alleged was being overtaken by the deceased. This witness had given evidence at the Police Court, where it was considered that his evidence had been favourable to the defendant. In examination in chief by defendant's Counsel he stated that the Morris was on its left side of the road and did not go over to its wrong side. He was asked if he had given evidence in the Police Court proceedings; and on his replying that he had he was asked various questions what he had said. Counsel for the plaintiffs objected.

Denis Murphy for the plaintiffs.

L. A. J. Smith for the defendant.

Brown, J., giving his ruling, said: — This line of questions is plainly leading up to an application by Mr. Smith to treat his witness as hostile and to be allowed to cross-examine him. I have no doubt that these questions were allowed to go on too long without the application being made; and that they have been in the nature of cross-examination, no application having yet been made and no leave having yet been granted. And I confess that I was at one time of the opinion that the application, when it was made, would have to be refused.

By section 22 of the Common Law Procedure Act 1854 where a witness, *in the opinion of the Judge,* is adverse to the party calling him that party may, *with leave of the Judge,* put to him statements which he has previously made which are inconsistent with his present testimony. Under that section it is, therefore, a pre-requisite that the witness must, in the opinion of the Judge, be "adverse." A witness is considered to be adverse if, by his demeanour or by his manner of answering questions, he shows that he is hostile in mind to the party calling him, and is not desirous of telling the Court the truth. This witness has given no ground at all for considering that he is "adverse;" and if the English section applied here, I should be bound to refuse the application when it is made.

But by section 155 of our Evidence Ordinance the Court's discretion is not fettered by any such limitation as is imposed by section 22 of the Common Law Procedure Act. It has been brought to my notice (though not, in my opinion, in the way it should have been) that this witness, in giving evidence on a previous occasion, made a statement on a material matter which conflicts with his present testimony. If that proves to be the case, by our law I have an unfettered discretion to allow Mr. Smith to cross-examine him on it.

When a witness has given an answer or answers, which the party calling him knows to be in conflict with some statement or evidence which he has previously made or given, the proper procedure, in my opinion, is for Counsel then to ask him (as was done in this case) whether he made a statement (or gave evidence) at a certain place on a certain date. Having heard his answer (whatever it may be) no further questions should be put at that stage. But Counsel should then hand to the Judge the statement (or record of the evidence), and apply for leave to cross-examine him under the provisions of section 155 of the Evidence Ordinance. The Judge, having given the other side an opportunity of seeing the document and making his submissions on the application, will then give his ruling. That, in my view, is the proper procedure, in a situation of this kind.

I now ask Mr. Smith to hand up the record of the evidence which the witness gave in the Police Court.

SAW THEAN TEIK v. REGINA.

[A. Cr. J. (Spenser Wilkinson, J.) December 15, 1952]

[Penang — Criminal Appeal No. 47 of 1952]

Road Traffic — Motor Vehicles (Driving Offences) Proclamation — Dangerous driving — Evidence of intoxication — Wrongful admission of reports — Criminal Procedure Code (Cap. 21), s. 427.

This was an appeal against the conviction of the appellant for dangerous driving. At the trial, the reports of a Medical Officer and of the Senior Government Chemist were put in evidence, although the Medical Officer and the Senior Government Chemist were called as witnesses.

Held: (1) it is wrong for a witness in a criminal case to produce a report as a substitute for oral evidence; (2) when a witness whose report is admissible under the Criminal Procedure Code is called to give oral evidence his report should only be used, if at all, to refresh his memory or corroborate the oral evidence; (3) in a summary trial no inference can be drawn from a failure to cross-examine witnesses offered for cross-examination only.

Semble: evidence of intoxication may well be admissible upon a charge of dangerous driving notwithstanding its prejudicial nature, if it was relevant to an issue before the court.

Cases referred to:—

(1) *Tan Siong Kok v. R.* (1952) M.L.J. 137; (1952), 3 M.L.R. 32.

(2) *Kamaruddin bin Omar v. Public Prosecutor* (1938) M.L.J. 63.

(3) *Girdari Lall & Ors. v. Public Prosecutor* (1946) M.L.J. 87.

CRIMINAL APPEAL.

Eusoffe Abdoolcader for the appellant.

C. M. Sheridan (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson, J.: — The appellant was convicted on a charge of dangerous driving under section 4 of the Motor Vehicles (Driving Offences) Proclamation (improperly described in the Charge as G.N. 151/51) and was fined $100 and his driving licence endorsed.

The Charge arose out of a collision between the appellant's car and that of the Complainant Rozells on the night of the 20th/21st January, 1952 soon after midnight in Burmah Road at a time when it was drizzling and the road was wet. The gist of the Complainant's story was that as the appellant's car approached his it swerved first to its right or off-side